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RUEHCV/AMEMBASSY CARACAS 3447
RUEHLP/AMEMBASSY LA PAZ MAR LIMA 3093
RUEHGL/AMCONSUL GUAYAQUIL 4183
RULSDMK/DEPT OF TRANSPORTATION WASHDC
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C O N F I D E N T I A L QUITO 000175

SIPDIS

E.O. 12958: DECL: 3/9/2019

TAGS: [EAIR](#) [ECON](#) [EC](#)

SUBJECT: DESPITE PROMISES, GOE FAILS TO ACT IN AVIATION TAX DISPUTE

REF A: (Hutchens-Brust email, 2/5/09), B: (Barr-Hutchens email, 12/31/08), C: 08 State 98687

Classified by Ambassador Heather Hodges. Reason: 1.4 b and d.

11. (C) Summary. On March 3, 2009 EconOff met with Foreign Ministry representatives to discuss the GOE's taxation of U.S. carriers in violation of the U.S.-Ecuadorian aviation agreement. The Embassy has been engaged in discussions with GOE officials about this matter since March 2008. Although the GOE has repeatedly expressed a willingness to address our concerns, we do not see signs of forward movement and request Department guidance on potential next steps. End Summary.

BACKGROUND TO THE DISPUTE

12. (SBU) The U.S.-Ecuador aviation agreement prohibits taxation of "conversions and remittances" of local revenues of each country's airline carriers. The agreement was signed in 1986 and has been operational since then, with renewals of its annexes over the years. In December 2007, the GOE began taxing capital transfers abroad, including remittances by U.S. carriers. This tax was initially 0.5 percent, but was raised to 1 percent in December 2008. The Embassy has received complaints from U.S. carriers and raised the issue with both the MFA and the GOE tax agency (SRI). The SRI informed EconOffs that an international treaty obligation is grounds for it to cease applying the tax on U.S. carriers and return the already collected money, provided that it received affirmation from the MFA of the treaty obligation.

MFA STUMBLING BLOCK

13. (C) The Director General of the Office of Sovereignty, Bolivar Torres, has consistently told EconOffs over the past year that he wants to resolve this matter quickly, but he has continually asked for additional documents and details rather than taking measures that will provide relief for the U.S. carriers. The MFA's initial concern was that the annexes to the aviation agreement had expired. The Embassy had submitted a request to extend the annexes in 2006 but received no reply from the GOE. After consultations with the Department, the Embassy submitted a request to renew the annexes through June, 2009 and retroactively apply them since their expiration in 2006 (reftel c). The Embassy had received assurances in August 2008 that once diplomatic notes were exchanged, the GOE would "fix" the situation by ceasing taxation and allow the airlines to apply for reimbursement.

14. (C) Upon receipt of the U.S. diplomatic note, however, Torres informed EconOffs that the matter was still not resolved. The GOE now questioned the validity of the agreement itself, since it was never formally ratified by Ecuador. EconOffs responded that while our bilateral aviation agreement does state that the parties must

exchange diplomatic notes confirming the agreement's validity, it also states that operations under the terms of the agreement would be permitted upon signature. The two sides have exchanged multiple diplomatic notes over the past 23 years agreeing to continue to allow operations under the terms of the agreement and extending the agreement's annexes. In meetings in November 2008, Torres asked for copies of these diplomatic notes, which he claimed were lost, along with a non-paper that laid out the U.S. interpretation of the validity of the agreement.

15. (C) EconOff met with other MFA representatives over the last few months to deliver the requested materials and non-paper (ref a). In addition, the Embassy received a diplomatic note from the GOE in December agreeing to the extension of the agreement's annexes (ref b). At a meeting on March 3, however, Torres returned to the arguments he had advanced in November. He maintained that the agreement was not valid, and therefore he was unable to request his GOE counterparts to end the taxation. While cordial, Torres engaged in a lengthy explanation of the required ratification of the agreement and made requests for additional copies of missing diplomatic notes. Torres said he needed a few more weeks to review the matter, but despite being pressed, never explained what he was looking for or what he hoped to achieve in the next few weeks that will enable him to resolve matters.

COMMENT AND ACTION REQUEST

16. (C) The Embassy suspects that the MFA is drawing out this matter, avoiding making a decision or telling us that it cannot provide the necessary guidance to the tax authorities. We suspect this lack of progress is driven by MFA officials' concerns that they may be audited or subject to criminal prosecution if they authorize the return of GOE funds without sufficient legal cover. While the provisional validity of the airline agreement has historically been sufficient to allow airline operations, these officials apparently do not believe that it will provide them with the necessary cover for stopping taxation and returning the funds (there are numerous instances in Ecuador where public officials have been prosecuted and/or politically persecuted for taking what appeared to be logically reasonable positions).

17. (C) It is not clear to the Embassy how we can overcome this reluctance. Torres vaguely suggested that the best solution might be to negotiate a new aviation agreement. He suggested the U.S.-Ecuador Bilateral Dialogue as a good forum for those discussions. In the Embassy's view, the Bilateral Dialogue can explore new ideas and advance projects for which there is a common vision on how to proceed. Otherwise, referring this matter to the Bilateral Dialogue might be an invitation to delay action.

18. (C) Action request: The Embassy would appreciate Washington guidance on how we can advance the tax issue, either in the framework of suggestions made by Torres per paragraph 7, or other measures (such as a reciprocal tax on Ecuadorian carriers if that is feasible under U.S. legislation) that might capture the GOE's attention and increase its incentive to come up with a solution.

Hodges